APPENDIX A

Constitutional and Statutory Provisions Involved

Constitution of the United States

ARTICLE THE FOURTEENTH

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

County Law of the State of New York

SECTION 150. The supervisors of the several cities and towns in each county, when lawfully convened, shall constitute the board of supervisors of the county.

SECTION 153(4). Whenever in this chapter or other general, special or local law, the board of supervisors is authorized or required to act, and no proportion of the voting strength for such action is otherwise prescribed, such action shall be taken by the affirmative vote of a majority of the total membership of the board. A roll call shall be taken and entered by the clerk in the minutes of its proceedings when required by law or upon request of any member of the board.

Suffolk County Charter (Chapter 278, Laws 1958)

SECTION 201. The board of supervisors; general powers.

The supervisors of the several towns of the county, when lawfully convened, shall constitute the board of supervisors of the county. It shall be the legislative and policy determining body of the county and shall, except as otherwise expressly provided in this charter, have and exercise all the powers and duties of the county together with all the powers and duties which now are, or may hereafter be, conferred or imposed on boards of supervisors by all laws applicable to the county not inconsistent with this charter. The board of supervisors shall also have such other powers and duties as are provided by this charter.

SECTION 203. Voting; quorum.

Each supervisor shall have one vote. A majority of the whole number of the members of the board shall constitute a quorum. Except as otherwise provided by law, local laws and resolutions shall be adopted by a vote of not less than a majority of the total membership of the board. In case of a tie vote on any matter at any meeting of the board of supervisors the county executive shall have a casting vote provided, however, that he shall not have a vote as to any local law or resolution which provides a new form of government for the county or changes the voting strength of the supervisors or which changes the location of the county seat.

SECTION 1206. Vote on creation of county police district.

1. At the general election at which a vote is taken on the adoption of this charter there shall also be submitted to all the electors of all the towns of Suffolk county, including the electors within incorporated villages, the following question, "Shall the town of authorize the transfer of its police functions to the county police department of Suffolk county and shall said town become a part of the Suffolk county police district?"

2. At said general election at which the vote is taken on the adoption of this charter there shall also be submitted to all the electors of each incorporated village in said county the following separate question, "Shall the village of authorize the transfer of its police functions to the county police department of Suffolk county and said village become a part of the Suffolk county police district?"

SECTION 1207. County police district; how established.

1. If three or more contiguous towns, by a majority vote cast in each such town, elect to transfer their police functions to the county and to become part of the county police district, a county police district shall thereupon be created effective on the first day of January of the second year following such election and such district shall thereupon become part of and be under the jurisdiction of the county police department. The county police district so created shall consist of the unincorporated territory of the three or more contiguous towns so electing to become part of the county police district and also the territory of any incorporated village situated within any of said contiguous towns which has by a majority vote cast in such village, elected to transfer its police functions to the county and to become part of the county police district. The election of any such town or village shall be irrevocable.

2. The town of Shelter Island shall be deemed to be contiguous to the towns of Southold, Southampton and East Hampton.

3. Once a county police district has been created, any town, village or special police district contiguous to such county police district may thereafter elect to become part of the county police district and upon making such election by the majority vote of the electors of such town, special police district or village, the area comprising such town, special police district or village shall become irrevocably a part of the county police district on the first day of January of the second year following such election.

SECTION 1210. Expenses of the police department; how raised.

a. The board of supervisors shall annually cause to be raised the amount of money required to pay the annual expenses of the police department by levying and collecting a uniform tax upon the real estate subject to taxation located within the county police district, based upon the equalized assessed valuation of such real estate.

Village Law of the State of New York

SECTION 34. If the territory so incorporated as a village includes within its boundaries part of a special district established by the town for a sewer, water, light, fire, park, health, police or any other special district for municipal purposes the territory so included within the boundaries of the village shall not be relieved from bearing its proportionate share of any liability or indebtedness incurred for such special district purposes while such territory was a part of such special district and until such liability is discharged, or such indebtedness paid the proportionate share to which such territory would be liable if it had not been included in the boundaries of the village shall be levied upon, assessed and collected from such territory by the proper officers of such village in the same manner as if such territory had not been included within the boundaries of the village. All moneys so collected shall be paid over from time to time by the village treasurer to the supervisor of the town to discharge such liability. The collector or receiver of taxes of a town and the treasurer of a county shall continue in the execution of his duties in respect to the property included in the boundaries of a village incorporated under the provisions of this act until he shall have collected the taxes authorized or assessed for the year of such incorporation or which have been extended on the town assessment roll and become a lien after such incorpo-

ration and pay to the treasurer of the village when collected the taxes extended on the assessment roll against property within the village for highway, health, water, fire, park, sewer, police or other special district purposes.

SECTION 188a. The board of trustees or municipal board acting as police commissioners of any village of the first, second and third class within a county of more than three hundred thousand population adjoining a city of the first class, except a village within the county of Westchester, or wholly within a county containing a city of more than five hundred thousand population and less than one million population and in the county of Rockland shall, and of any other village may, instead of appointing policemen for fixed terms pursuant to section one hundred and eighty-eight of this chapter, by resolution, establish a police department in such village and appoint a chief of police, and such captains of police, lieutenants of police, sergeants of police, and patrolmen as may be needed, and fix their compensation. Such board of trustees or municipal board, after the establishment of such police department, shall have power and authority to contract with any other village or villages, other than a village of the first class, for the supplying of police protection therein. Such contract or contracts may be for a term of years not exceeding five years at any one time and shall further provide the terms and conditions mutually determined and agreed upon between the contracting parties with respect to such police service. No person shall be appointed a member of any such police force except as provided in section one hundred and eighty-eight-b of this chapter. The board of trustees of a village may submit to the qualified voters of the village at a general or special election a proposition to abolish a police department established pursuant to this section and upon the adoption thereof by a majority of the qualified voters of the village voting upon the proposition, the department shall be deemed abolished.

APPENDIX B

Complaint

SUPREME COURT

SUFFOLK COUNTY

INCORPORATED VILLAGE OF PORT JEFFERSON, ROBERT L. ROBERTSON and ROBERT E. LINK, on behalf of themselves and all others similarly situated owners, taxpayers, voters, residents, electors and citizens, in the Incorporated Village of Port Jefferson, in the Towns of Brookhaven, Smithtown, Huntington, Islip and Babylon, and in every Village to be incorporated in said Towns hereafter,

Plaintiffs,

against

THE BOARD OF SUPERVISORS OF THE COUNTY OF SUFFOLK, THE COUNTY TREASURER OF THE COUNTY OF SUFFOLK, and the RECEIVER OF TAXES OF THE TOWN OF BROOKHAVEN,

Defendants.

Plaintiffs, complaining of the defendants, by Arthur S. Berger, their attorney, respectfully allege on behalf of themselves and on behalf of all others similarly situated:

FIRST CAUSE OF ACTION:

1. The questions which are the subject of this action are of common and general interest to the owners, taxpayers, residents, voters, electors and citizens in the Incorporated Village of Port Jefferson, in the Towns of Brookhaven, Smithtown, Huntington, Islip and Babylon,

and to those who will be in every Village to be incorporated in said Towns.

2. That the plaintiff Incorporated Village of Port Jefferson (hereinafter referred to as Village) is a domestic municipal corporation situated within the Town of Brookhaven, Suffolk County, New York, having been duly incorporated on April 10, 1963, under the Village Law of the State of New York, and said plaintiff is entitled to all the powers, privileges and rights conferred upon villages organized thereunder.

3. a. That plaintiff Robert L. Robertson was and now is the Mayor of the Village, duly elected, qualified and acting as such, is a resident, elector and taxpayer in said Village, a citizen of the State of New York and of the United States, and is a qualified voter entitled to vote for all propositions submitted to the voters of Suffolk County and to vote for supervisor of the Town of Brookhaven; and is the owner of a certain piece or parcel of land situate, lying and being in the Village, subject to taxation, more particularly bounded and described as follows:

North by Williams Street
East by High Street
South by Schultz
West by Wick

and

b. That the plaintiff Robert E. Link is a resident, elector and taxpayer in said Village, a citizen of the State of New York and of the United States, is a voter qualified and entitled to vote for all propositions submitted to the voters of Suffolk County and to vote for supervisor of the Town of Brookhaven; and is an owner of a certain piece or parcel of land situate, lying and being in the Village, subject to taxation, and more particularly bounded and described as follows:

Suassa Park
822 Sec 1
157 to 164
East 5 ft. of 165

4. That on or about March 20, 1958, there was enacted into law by the legislature of this state Chapter 278 of the Laws of 1958, known as the Suffolk County Charter (and referred to hereinafter as the Charter) which Charter contained an Article XII and certain sections therein relating to a Department of Police, including Sections 1206, 1207 and 1210(a) each of which provides as follows:

" 1206. Vote on creation of county police district.

1. At the general election at which a vote is taken on the adoption of this charter there shall also be submitted to all the electors of all of the towns of Suffolk county, including the electors within incorporated villages, the following question, 'Shall the town of authorize the transfer of its police functions to the county police department of Suffolk county and shall said town became a part of the Suffolk county police district?'

2. At said general election at which the vote is taken on the adoption of this charter there shall also be submitted to all the electors of each incorporated village in said county the following separate question, 'Shall the village of authorize the transfer of its police functions to the county police department of Suffolk county and said village become part of the Suffok county police district?'

" 1207. County police district; how established.

1. If three or more contiguous towns, by a majority vote cast in each such town, elect to transfer their police functions to the county and to become part of the county police district, a county police district shall thereupon be created effective on the first day of January of

the second year following such election and such district shall thereupon become part of and be under the jurisdiction of the county police department. The county police district so created shall consist of the unincorporated territory of the three or more contiguous town so electing to become part of the county police district and also the territory of any incorporated village situated within any of said contiguous towns which has by a majority vote cast in such village, elected to transfer its police functions to the county and to become part of the county police district. The election of any such town or village shall be irrevocable.

2. The town of Shelter Island shall be deemed to be contiguous to the towns of Southold, Southampton and East Hampton.

3. Once a county police district has been created, any town, village or special police district contiguous to such county police district may thereafter elect to become part of the county police district and upon making such election by the majority vote of the electors of such town, special police district or village, the area comprising such town, special police district or village shall become irrevocably a part of the county police district on the first day of January of the second year following such election."

" 1210. Expenses of the police department; how raised.

a. The board of supervisors shall annually cause to be raised the amount of money required to pay the annual expenses of the police department by levying and collecting a uniform tax upon the real estate subject to taxation located within the county police district, based upon the equalized assessed valuation of such real estate."

5. That in and by said Sections 1206 and 1207 of the Charter provisions were enacted for the creation of a

County Police District to consist a) of the unincorporated territory of contiguous towns electing to become part of the County Police District; and to consist b) of the territory of any incorporated village in or touching any of said towns if, by majority vote cast in the incorporated village, the electors of the village elected to become part of the County Police District and authorized the transfer of the police functions of the village to the County Police Department; that said provisions of Sections 1206 and 1207 were enacted to afford to the electors of any incorporated village within or contiguous to said County Police District either in being at the time of the creation of the County Police District or incorporated subsequently, the opportunity and right to elect whether to become part of said County Police District and whether to transfer the police functions of said incorporated village to the County Police Department; and in and by Section 1210(a) of the Charter provision was made for raising the moneys required to pay the annual expenses of the County Police Department by annually levying and collecting a tax on real property subject to taxation within the County Police District.

6. That an opportunity was afforded the electors of each incorporated village in Suffolk County, including the incorporated Villages of Northport, Asharoken, Huntington Bay and Lloyd's Harbor, situated in the Town of Huntington, and the Incorporated Village of Amityville, situated in the Town of Babylon, and the Incorporated Village of Head of the Harbor, situated in the Town of Smithtown, to elect whether to become part of the County Police District and whether to transfer the police functions of such village to the County Police Department, and a separate question to this effect was submitted to all the electors of each incorporated village; and that said County Police District was created effective January 1, 1960, to consist of the unincorporated territory of the five western

towns in Suffolk County, to wit, Babylon, Islip, Smithtown, Huntington and Brookhaven, after a majority vote in 1958 was cast in each of said towns, to transfer their police functions to the County and to become part of the police district; and said county Police District further consisted of the territory of the incorporated villages of Patchogue, Bellport, Shoreham, Old Field, Poquott, Belle Terre, Babylon, Lindenhurst and Brightwaters situated in said towns after a majority vote was cast in each of such villages to transfer its police functions to the county and to become part of the County Police District; and that the operation and effect of said Sections 1207 and 1210(a) of the Charter for the creation of a County Police District and providing for a tax for annual police department expenses was confined only to half the County of Suffolk and to its five western contiguous towns and the villages incorporated therein electing to become part of said County Police District and to transfer their police functions thereto.

7. That included in the County Police District was a part of the unincorporated territory of the Town of Brookhaven that later became incorporated as the Incorporated Village of Port Jefferson.

8. That, on information and belief, said County Police District did not and does not include the territory of the incorporated villages of Northport, Asharoken, Huntington Bay and Lloyd's Harbor situated in the Town of Huntington, and the Incorporated Village of Amityville, situated in the Town of Babylon, and the Incorporated Village of Head of the Harbor, situated in the Town of Smithtown, whose respective electors, by separate questions submitted to them as electors of said incorporated villages, were given the opportunity to elect whether to transfer the police functions of said villages, respectively, to the County Police Department and whether to become part of the County Police District, and whose electors by

majority vote elected not to authorize such transfer and not to become part of the County Police District; and, on information and belief, the real property within said villages is not subject to taxation and is not taxed for annual police department expenses under Section 1210(a) of the Charter.

9. That the aforesaid Charter and particularly Article XII and Sections 1206, 1207 and 1210(a) thereof were enacted by the legislature of this state to confer on the electors of every village incorporated under the Village Law in Suffolk County in, or in contact with, towns comprising the County Police District, regardless of the date of incorporation of such village, the right and opportunity to elect at least once whether to become part of the County Police District and to transfer the police functions of said village to the County Police Department; that the transfer of said functions was precluded by the Constitution of the State of New York unless the transfer received the majority of votes cast in each village as one unit; and the legislature intended to exclude from the Suffolk County Police District the incorporated territory of any village, in being when the County Police District was created or incorporated under the Village Law subsequent to the creation of the County Police District, whose electors, once given the right and opportunity to elect, by majority vote elected not to become part of the County Police District and not to transfer its police functions to the County Police Department; and that the legislature never intended Section 1210(a) of the Charter to be effective or to apply to the real property of any such village which has elected by majority vote cast in such village not to become part of the County Police District, and never intended the real property of such village to be subject to taxation or to be taxed for annual police department expenses under said Section 1210(a).

10. That the Charter, and all the sections thereof, was adopted by the electors of the County of Suffolk in the year 1958 and became effective thereafter and is still in force and effect.

11. That on or about April 10, 1963, a part of the unincorporated territory of the Town of Brookhaven became incorporated under the Village Law as the Incorporated Village of Port Jefferson.

12. That Section 34 of the Village Law of the State of New York provides as follows:

"If the territory so incorporated as a village includes within its boundaries part of a special district established by the town for a sewer, water, light, fire, park, health, police or any other special district for municipal purposes the territory so included within the boundaries of the village shall not be relieved from bearing its proportionate share of any liability or indebtedness incurred for such special district purposes while such territory was a part of such special district and until such liability is discharged, or such indebtedness paid the proportionate share to which such territory would be liable if it had not been included in the boundaries of the village shall be levied upon, assessed and collected from such territory by the proper officers of such village in the same manner as if such territory had not been included within the boundaries of the village. All moneys so collected shall be paid over from time to time by the village treasurer to the supervisor of the town to discharge such liability. The collector or receiver of taxes of a town and the treasurer of a county shall continue in the execution of his duties in respect to the property included in the boundaries of a village incorporated under the provisions of this act until he shall have collected the taxes authorized or assessed for the year of such incorporation or which have been extended on the town assessment

roll and become a lien after such incorporation and pay to the treasurer of the village when collected the taxes extended on the assessment roll against property within the village for highway, health, water, fire, park, sewer, police or other special district purposes."

13. That in and by said Section the legislature provided and intended that upon incorporation as a village the territory should cease to be included as part of the special district; and said Section 34 became effective prior to the enactment and adoption of the Charter, was in force and effect at the time of the incorporation of the Village, and still is in full force and effect.

14. That the County Police District consisted in part of such part of the unincorporated territory of the Town of Brookhaven until said territory became incorporated on April 10, 1963, at which date as an incorporated village it was no longer included in and comprised in said County Police District and would be included therein only if, after an opportunity to elect and after a majority vote cast in said village, the electors of said village elected to become part of the County Police District and authorized the transfer of its police functions to the County Police Department.

15. That on and after April 10, 1963, and until the electors of the Village, by majority vote cast therein, so elect to become part of the County Police District, the real property within the Village, including that of plaintiffs Robert L. Robertson and Robert E. Link, and of all owners and taxpayers similarly situated within the Village, was not and is not included within the County Police District and was not and is not subject to taxation for annual police department expenses under Section 1210(a) of the Charter, and Section 1210(a) is not effective or applicable as to said real property.

16. That, after public hearings, a Special Election was duly held in the Village on October 17, 1963, and by a majority vote of the qualified electors, it was voted and elected that the Village shall remain separate from the County Police District and shall retain and exercise its police functions and not transfer them to the County Police Department; that the electors of the Village never voted since the date of incorporation on April 10, 1963, to become part of the County Police District or to transfer the police functions of the Village.

17. That Section 188a of the Village Law of the State of New York provides as follows:

"The board of trustees or municipal board acting as police commissioners of any village of the first, second and third class within a county of more than three hundred thousand population adjoining a city of the first class, except a village within the county of Westchester, or wholly within a county containing a city of more than five hundred thousand population and less than one million population and in the county of Rockland shall, and of any other village may, instead of appointing policemen for fixed terms pursuant to section one hundred and eighty-eight of this chapter, by resolution, establish a police department in such village and appoint a chief of police, and such captains of police, lieutenants of police, sergeants of police, and patrolmen as may be needed, and fix their compensation. Such board of trustees or municipal board, after the establishment of such police department, shall have power and authority to contract with any other village or villages, other than a village of the first class, for the supplying of police protection therein. Such contract or contracts may be for a term of years not exceeding five years at any one time and shall further provide the terms and conditions mutually determined and agreed upon between the contracting parties with respect to such police service. No person shall be appointed a member of any

such police force except as provided in section one hundred and eighty-eight-b of this chapter. The board of trustees of a village may submit to the qualified voters of the village at a general or special election a proposition to abolish a police department established pursuant to this section and upon the adoption thereof by a majority of the qualified voters of the village voting upon the proposition, the department shall be deemed abolished."

18. That the foregoing provision became effective prior to the enactment and adoption of the Charter, was in force and effect at the time of the incorporation of the Village and still is in full force and effect.

19. That on October 24, 1963, the Board of Trustees of the Village duly adopted a resolution pursuant to Section 188a of the Village Law which established a police department in and for the Village the members of which would exercise the rights and duties of peace officers and law enforcement officers, and authorized the employment of personnel for that purpose and the purchase of building, equipment, uniforms and motor vehicles therefor; that said police department has not been abolished; that, among other things, said resolution further resolved that the Village was not and never was part of the County Police District and is independent and separate therefrom and that the real property within the Village was not subject to taxation for annual police department expenses under Section 1210(a) of the Charter.

20. That prior to the commencement of this action and on or about October 25, 1963, a copy of said resolution was duly sent to each and all of the defendants herein, and a copy of said resolution is annexed hereto and marked Exhibit "A".

21. That thereafter and on or about October 28, 1963, plaintiff Robert L. Robertson, as Mayor of the Village,

appeared before the defendant Board of Supervisors and apprised them of the position and action of the Board of Trustees of the Village, and at said meeting the Board of Supervisors refused to concede or acquiesce in the position and action of the said Board of Trustees and asserted its intention to oppose the Village; that personnel of the County Police Department now usurp the police functions of the Village and assert jurisdiction within the Village.

22. That the defendant Board of Supervisors, designated and described by its official title, comprise the supervisors of the ten towns of Suffolk County, and the legislative and police determining body of the County, having the general powers conferred upon them by Sections 201 and 202 of the Charter, including the power and duty to make appropriations and levy taxes, and more particularly under and pursuant to Section 1210(a) of Chapter 278 of the Laws of New York 1958, known as The Suffolk County Charter (herein referred to as the Charter) having the power and duty annually to cause to be raised the amount of money required to pay the annual expenses of the Suffolk County Police Department by levying and collecting a uniform tax upon the real property subject to taxation within the Suffolk County Police District based upon the equalized assessed valuation of such real property.

23. That the defendant County Treasurer has, among other powers and duties, the duty to collect all taxes of the County, including the tax to pay the annual expenses of the Suffolk County Police Department, and to receive and have custody of all public funds belonging to the County.

24. That the defendant Receiver of Taxes of the Town of Brookhaven has, among other powers and duties, the

power to collect all taxes of the County of Suffolk in the said Town including said tax.

25. That the rate of taxation as levied, collected, fixed and extended on the assessment rolls of the Town of Brookhaven for the annual expenses of the Suffolk County Police Department in 1962/1963 was $1.49 for each and every one hundred dollars of assessed valuation.

26. That the total equalized assessed valuation of the real property within the Incorporated Village of Port Jefferson for 1962/1963 as shown upon the assessment rolls of the Town of Brookhaven for 1962/1963, and upon the basis of which the tax levy for 1962/1963 was made under Section 1210(a) of the Charter and collected by defendants for the annual expenses of the Suffolk County Police Department, was the sum of $15,906,235, and that total taxes for said Police Department expenses were levied and collected by defendants against said real property in the sum of $237,002.90; that the equalized assessed valuation of the real property of plaintiff Robert L. Robertson for 1962/1963 as shown on said assessment rolls, and upon the basis of which said tax levy was made, is the sum of $1700.00; and that taxes for said Police Department expenses were levied and collected by defendants against said real property in the sum of $25.36; that the equalized assessed valuation of the real property of plaintiff Robert E. Link for 1962/1963 as shown on said assessment rolls and upon the basis of which said tax lexy was made is the sum of $3,300.00; and that taxes for said Police Department expenses were levied and collected against said real property in the sum of $49.17.

27. That, on information and belief, the assessed valuations shown by the assessment rolls for the Town of Brookhaven in 1962/1963 for the territories comprising the

incorporated villages in the Town of Brookhaven were as follows:

Port Jefferson	$15,906,235
Patchogue	10,202,411
Bellport	2,848,752
Old Field	1,577,278
Belle Terre	972,029
Poquott	548,605
Shoreham	505,243

28. That all said villages were afforded the right and opportunity to elect whether to become part of the County Police District and to transfer police functions except the Village which in 1962/1963 paid $237,002.90 in taxes to pay County Police Department expenses.

29. That in another and separate proceeding under Article 78 in this Court the Village Treasurer of the Village is asserting a cause of action separate from those alleged in this action to require the defendant County Treasurer to perform the duty enjoined upon him by the Village Law to pay to the Village Treasurer the proportion of taxes levied and collected against said real property since April 10, 1963, and to recover on said collected moneys; that demand pursuant to Section 34 of the Village Law was made on November 4, 1963, upon the County Treasurer for payment of said moneys and said demand was refused on the ground that the Village was and is a part of the County Police District; that, on information and belief, defendants wrongfully and unlawfully intend to levy and collect taxes, are levying and collecting taxes, and will continue in 1963/1964 and in every future year to levy and collect taxes, in sums approximating and exceeding $237,000 each year, to pay the annual expenses of the Suffolk County Police Department upon the real property within the Village, including the real property of plaintiffs Robert L. Robertson and Robert E. Link, and of all owners and taxpayers simi-

larly situated, unless enjoined and restrained therefrom by a judgment of this Court.

30. That plaintiffs have no adequate remedy at law and a continuation of the wrongful acts of defendants in levying and collecting taxes to pay the annual expenses of the Suffolk County Police Department against the said real properties within the Village, including those of plaintiffs Robert L. Robertson and Robert E. Link and of all owners and taxpayers similarly situated within the Village will cause irreparable harm to plaintiffs and all others similarly situated and lead to a multiplicity of actions or special proceedings.

31. That a declaration of the rights of the plaintiffs and others similarly situated and their relationship to the County Police District is essential to the safety and welfare of the plaintiffs and of all electors of the Village similarly situated, to the autonomy of the Village, to the proper and lawful exercise of their rights and duties by the personnel of the police department in and for the Village, and to the avoidance of irreparable injury and multiplicity of actions due to the wrongful levying and collecting of taxes to pay annual police department expenses against real property within the Village.

FOR A SECOND, SEPARATE AND DISTINCT CAUSE OF ACTION:

32. That all statements and allegations made in the prior cause of action should be deemed repeated herein.

33. That if it is declared and held under the Charter and Sections 1206, 1207 and 1210(a) that the Village is included within and is part of the County Police District or that its police functions are transferred to the County Police Department or that the real property within the Village, including that of plaintiffs Robert L. Robertson

and Robert E. Link and of all others similarly situated, is subject to taxation to pay the annual expenses of the County Police Department pursuant to Section 1210(a) of the Charter or that the Board of Trustees of the Village were and are not empowered to establish a police department in and for the Village whose members shall exercise the rights and duties of peace officers and law enforcement officers generally, the Charter and Sections 1207 and 1210(a) thereof thus declared, held and applied would violate the New York State Constitution and the Constitution of the United States in that as thus held and applied they would constitute a local bill "incorporating villages" in violation of Article 3, Section 17, of the New York State Constitution which bill was not recommended by commissioners or any public agency as provided in Section 21, Article 3, of said Constitution; in that thus held and applied they would constitute a transfer of police functions of the Village in violation of Article 9, Section 2(c) of the New York State Constitution; in that thus held and applied they would constitute a denial of equal protection of the laws in violation of Article 1, Section 11, of the New York State Constitution and the fourteenth Amendment to the Constitution of the United States; in that thus held and applied they would deprive the Village of self-government and home-rule in violation of Article 9, Section 8, of the New York State Constitution; in that thus held they would constitute a deprivation of the liberty and property of the plaintiffs without due process of law in violation of Article 1, Section 6, of the New York State Constitution and of the Fourteenth Amendment to the Constitution of the United States; in that thus held they would constitute a disfranchising of plaintiffs and others similarly situated as citizens of the State of New York in violation of Article 1, Section 1, of the New York State Constitution.

For a Third Cause of Action Against the Board of Supervisors

34. That all statements and allegations made in the paragraphs numbered 1; 2; 3 a and b, 4, 5, 6, 7, 10, 11, 22 and 26 set forth in the First Cause of Action shall be deemed repeated herein.

35. That Sections 201 and 203 of said Charter provide as follows:

Section 201 "The supervisors of the several towns of the county, when lawfully convened, shall constitute the board of supervisors of the county. It shall be the legislative and policy determining body of the county and shall, except as otherwise expressly provided in this charter, have and exercise all the powers and duties of the county together with all the powers and duties which now are, or may hereafter be, conferred or imposed on boards of supervisors by all laws applicable to the county not inconsistent with this charter. The board of supervisors shall also have such other powers and duties as are provided by this charter."

Section 203 "Each supervisor shall have one vote. A majority of the whole number of the members of the board shall constitute a quorum. Except as otherwise provided by law, local laws and resolutions shall be adopted by a vote of no less than a majority of the total membership of the board. In case of a tie vote on any matter at any meeting of the board of supervisors the county executive shall have a casting vote, provided, however, that he shall not have a vote as to any local law or resolution which provides a new form of government, for the county or changes the voting strength of the supervisors or which changes the location of the county seat."

36. That the County Law of the State of New York provides as follows:

Section 150. "The supervisors of the several cities and towns in each county, when lawfully convened, shall constitute the board of supervisors of the county."

Section 153. 4. "Whenever in this chapter or other general, special or local law, the board of supervisors is authorized or required to act, and no proportion of the voting strength for such action is otherwise prescribed, such action shall be taken by the affirmative vote of a majority of the total membership of the board. A roll call shall be taken and entered by the clerk in the minutes of its proceedings when required by law or upon request of any member of the board."

37. That said Sections of the County Law were in full force and effect prior to the enactment and adoption of the Charter and remain in full force and effect.

38. That general and specific powers are conferred on the Board of Supervisors by Sections 201 and 203, including the power to legislate, make local laws, create or abolish departments, provide for the enforcement of local laws, make appropriations and levy taxes; that the Board of Supervisors is and was intended to be the government of Suffolk County; that the voting and other powers conferred on them by Sections 201 and 203 and said Sections are interwoven with and are essential to the entire scheme of the Charter, that, among other things, they appoint the Commissioner of police (Section 1202(a)); they raise by taxes levied and collected on real property within the County Police District the annual expenses of the police department (Section 1210(a) and (b)); they purchase the property of the police department (Section 1214); their approval is required for the appointment of members of the Civil Service Commission (Section 601); the Department of Purchase (Section 701); the Department of Public

Works (Section 801); the Department of Health (Section 901); the Department of Civil Defense (Section 1101); the Department of Planning (Section 1301); the County Attorney (Section 1501) and the Medical Examiner (Section 1901) are appointed with their approval.

39. That the population of the ten towns of Suffolk County in 1960 divided into those within and those without the County Police District were as follows:

Within the Suffolk County Police District

Islip	172,959
Babylon	142,309
Huntington	126,221
Brookhaven	109,900
Smithtown	50,347

Outside the Suffolk County Police District

Southampton	26,861
Riverhead	14,519
Southold	13,295
East Hampton	8,827
Shelter Island	1,312

40. That the towns of Islip, Babylon, Huntington, Brookhaven and Smithtown comprise the County Police District, comprise 90% of the population of the County and are urban and heavily populated while the towns of Southampton, Riverhead, Southold, East Hampton and Shelter Island are not included in the County Police District, comprise 10% of the population of the County and are agricultural and sparsely populated.

41. That each of the ten supervisors comprising the Board of Supervisors, as the legislative and police determining body of the County having the power and duty, among other things, to levy taxes to pay the annual expenses of the County Police Department, represents the

Town in which he resides and which elected him, and not the population or the electors in the County of Suffolk; that the representation on the Board of Supervisors is based on geographical divisions of one vote per town and not on the number of the voting population in the County; that each town supervisor has the power to cast one vote regardless of the number of persons residing in his town and regardless of whether his town is within or outside the County Police District; that each town regardless of population has equal representation and has one vote on the Board of Supervisors, whether included in or excluded from the County Police District.

42. That by virtue of the provisions of Sections 150 and 153(4) of the County Law and of Sections 201, 203, 1206, 1207 and 1210(a) of the Charter there were created the County Police District and the geographic and voting structure of the Board of Supervisors.

43. That in consequence of the geographic and voting structure of the Board of Supervisors and of the creation of the County Police District in only the five towns of Islip, Babylon, Huntington, Brookhaven and Smithtown, the representation on the Board of Supervisors does not fairly represent the numbers or interests of the citizens of the County, is grossly and unjustifiably disproportionate to the distribution of voting population in the County Police District, in particular, and in Suffolk County, generally, and arbitrarily the votes of plaintiffs, and others similarly situated, in the said five towns comprising the County Police District have been impaired and debased thereby, while the votes of voters in the five towns outside the County Police District have been weighted more heavily, to wit: one vote in Shelter Island is worth 84 votes in Brookhaven; and in consequence of the geographic and voting structure of the Board of Supervisors and of the creation of a County Police District limited

to said five towns, the voting strength of the five towns outside the County Police District which represents 10% of the population of the County is enlarged, on the basis only of an invidiously geographic classification, to the point where 10% of the population outside the County Police District has the power to control one-half the representation on the Board of Supervisors, to block legislation, to frustrate and be unresponsive to the desires and demands of plaintiffs and others similarly situated for legislative remedial action and relief to revote the question of whether to become part of the County Police District or transfer their police functions if indeed they are part thereof and have transferred their functions, to impede or exaggerate appropriations and taxes to pay the expenses of the County Police Department and make appropriations or apply funds of the County or to enact laws and levy and collect taxes for County Police Department and other expenses and purposes, burdensome to, invasive of, or opposed by, plaintiffs and others similarly situated within the towns in the County Police District representing 90% of the population of the County; all of which deprives plaintiffs, and all others similarly situated, of liberty and property without due process of law in violation of Article 1, Section 6, of the New York State Constitution and the Fourteenth Amendment to the United States Constitution, and all of which contravenes the equal protection clauses as set forth in Article 1, Section 11, of the New York State Constitution and the Fourteenth Amendment to the Constitution of the United States in that plaintiffs and all others similarly situated have been denied equal protection of the laws.

44. That said geographic and voting structure of the Board of Supervisors and the creation of the County Police District in only five towns of Islip, Babylon, Huntington, Brookhaven and Smithtown has resulted in representation by towns and not by citizens and disfavors

plaintiffs and others similarly situated in said towns and impairs their effective voting rights in that they are placed in a position of constitutionally unjustifiable inequality as regards voters in irrationally favored towns outside the County Police District, and that, as population shifts and changes continue to increase the populations of, and urbanize and industrialize, the five towns within the County Police District beyond current levels while the population and character of the five towns outside the County Police District is substantially unaffected, the disparity and inequality will deepen; that the discrimination against plaintiffs and all others similarly situated will continue; all in contravention of due process and equal protection clauses of the New York State Constitution and the Fourteenth Amendment to the United States Constitution.

45. That taxes are being levied and collected against the property of plaintiffs and all others similarly situated in the five towns comprising the County Police District by persons who cannot and do not represent them, and by virtue of the voting strength of irrationally favored towns outside the County Police District.

46. That said Charter would not have been enacted by the legislature without the invalid provisions of Sections 201 and 203; that Sections 201 and 203 are inseparable from the remainder of the Charter and particularly Article XII and Section 1210(a) thereof.

47. That the geographical and voting structure and the creation of a half-county Police District has resulted in an unrepublican and unrepresentative government at the county level for plaintiffs, and all others similarly situated, and all citizens and taxpayers and electors of Suffolk County in general and of the Towns of Brookhaven, Islip, Smithtown, Huntington and Babylon and

the villages therein, in particular, regardless of whether they are included in the County Police District.

48. That if it is held and declared under the Charter and Sections 1206, 1207 and 1210(a) thereof that the Village is included within and is part of the County Police District or that its police functions are transferred to the County Police Department or that the real property within the Village, including that of plaintiffs and others similarly situated, is subject to taxation to pay the annual expenses of the County Police Department pursuant to Section 1210(a) of the Charter or that the Board of Trustees of the Village were and are not empowered to establish a police department in and for the Village whose members shall exercise the rights and duties of peace officers and law enforcement officers, the Charter, and Sections 201, 203, 1206, 1207 and 1210(a) thereof, and Sections 150 and 153(4) of the County Law and the creation of the County Police District and the geographic and voting structure of the Board of Supervisors deprive plaintiffs, and all others similarly situated, and the voting population in the towns and villages in the County Police District, in particular, of liberty and property without due process of law and deny them equal protection of the laws in violation of the said provisions of the State and Federal Constitutions; and that if it is held and declared under the Charter and Sections 1206, 1207 and 1210(a) thereof that the Village is not included within and a part of the Suffolk County Police District or that its police functions are not transferred, or that the real property within the Village, including that of plaintiffs and others similarly situated, is not subject to taxation, as aforesaid, or that the Board of Trustees were and are empowered to establish a police department, as aforesaid, still the Charter, and Sections 201 and 203 thereof and Sections 150 and 153(4) of the County Law and the geographic and voting structure of the Board of Supervisors

deprive plaintiffs, and all others similarly situated and the voting population in the Towns of Brookhaven, Smithtown, Huntington, Islip and Babylon, and all villages therein, including the Village of Port Jefferson, and in Suffolk County, in general, of liberty and property without due process of law and deny them equal protection of the laws in violation of said provisions of the Federal and State Constitutions.

49. That plaintiffs have no adequate remedy at law.

50. That the unconstitutionality of Sections 201 and 203 of the Charter renders the entire Charter, including Sections 1206, 1207 and 1210(a), void.

51. That a declaration of the constitutional validity of Sections 150 and 153(4) of the County Law and of the Suffolk County Charter and of the apportionment of the Board of Supervisors is essential to protect the rights to vote of plaintiffs and all others similarly situated embraced by the Civil Rights Act (42 USC Sections 1983 and 1988) and the laws of the State and to save them from continuous and unjustifiable discrimination and deprivation in violation of the Federal and State Constitutions.

52. That, unless they are enjoined from so doing, the defendant Board of Supervisors will continue to exercise their powers and perform their duties under the unconstitutional Charter and the cited provisions of the County Law, and the voting rights of plaintiffs and all others similarly situated will continue to be abused and diluted until valid statutes within constitutional limitations can be enacted by the legislature.

WHEREFORE, plaintiffs ask for judgment declaring the rights of the plaintiffs, and other similarly situated, and

their relationship to the Suffolk County Police District, and for other and further relief, as follows:

Under the first cause of action:

1. That the plaintiffs, residents, citizens, owners, electors, voters and taxpayers of the Incorporated Village of Port Jefferson and all others similarly situated were and are entitled to the same privileges, powers and rights conferred upon the electors and taxpayers of other villages organized under the Village Law, including the right to elect whether to become part of or remain separate from the County Police District and whether to transfer their police functions to the Suffolk County Police Department or to retain and exercise their police functions; and

2. That the Board of Trustees of the Village were and are empowered to establish a Village police department whose members shall exercise all rights, privileges, duties and responsibilities of peace officers and law enforcement officers as provided in the penal law, code of criminal procedure and other laws of the state and ordinances of the Village; and

3. That the Incorporated Village of Port Jefferson is separate from and not within or part of the County Police District; and

4. That Section 1210(a) of Chapter 278 of the Laws of New York 1958, known as the Suffolk County Charter, is not effective or applicable to said Incorporated Village of Port Jefferson and that none of the real property situated within said Village has been, is or will be subject to taxation to pay the annual expenses of the County Police Department pursuant to said Section 1210(a); and

5. That the defendants, as Board of Supervisors of the County of Suffolk, as County Treasurer, and as Receiver of Taxes of the Town of Brookhaven, respectively, and their successors, agents, employees and officers, be

restrained permanently from levying and collecting any tax upon any real property of the individual plaintiffs and of all others lying within the Incorporated Village of Port Jefferson to pay the annual expenses of the County Police Department as provided in Section 1210(a) of the Charter; and

6. That judgment directing the County Treasurer to pay to the Treasurer of the Incorporated Village of Port Jefferson pursuant to the duty imposed on the County Treasurer by Section 34 of the Village Law a sum of money representing taxes levied on and collected from said real property during 1962/1963 and 1963/1964 to pay the annual expenses of the Suffolk County Police Department is not sought herein for the reason that plaintiffs are advised and believe that said relief could not be claimed in this action but must be sought in a separate and independent Article 78 proceeding against said County Treasurer to require him to perform a duty enjoined upon him by said Section 34 of the Village Law, and said proceeding has been commenced in this Court and is now pending before any determination in this action in order to avoid any bar to said relief by the expiration of the four month period of limitations; provided, however, in the event said Article 78 proceeding is consolidated with this action or an order of this Court or justice requires that the relief sought therein be sought instead in this action then this complaint and request for judgment shall be deemed to adopt and repeat the statements and request for relief made in the pleading by the Incorporated Village of Port Jefferson by the Village Treasurer in that proceeding (which is attached hereto); and

7. That, if the Incorporated Village of Port Jefferson is held and declared under the Charter and Sections 1206, 1207 and 1210(a) thereof to be a part of the County Police District, or if Section 1210(a) of the Suffolk County Charter is held and declared to be effective and applicable

to said Village so that the real property of the individual plaintiffs and of all other similarly situated lying within the Incorporated Village of Port Jefferson is held and declared to be subject to taxation to pay the annual expenses of the County Police Department under Section 1210(a) of the Suffolk County Charter, or if it is held and declared that the police functions of the Village are transferred to the County Police Department or that the Board of Trustees of the Village were and are not empowered to establish a police department in and for the Village whose members exercise the rights and duties of peace officers and law enforcement officers generally, then plaintiffs, in any of these cases, ask for judgment under the second cause of action declaring that the Charter and Sections 1206, 1207 and 1210(a) thereof are void, invalid and violate the Constitutions of the State of New York and of the United States; and

8. That, under the third cause of action, and whether or not the Village is held and declared under the Charter and Sections 1206, 1207 and 1210(a) to be a part of the County Police District, whether or not the police functions of the Village are held and declared transferred to the County Police Department, whether or not the real property within the Village, including that of plaintiffs, and others similarly situated, is held and declared subject to taxation to pay the annual expenses of the County Police Department pursuant to Section 1210(a) of the Charter, whether or not the Board of Trustees of the Village were and are empowered to establish a police department in and for the Village whose members shall exercise the rights and duties of peace officers and law enforcement officers, the plaintiffs ask for judgment declaring Sections 150 and 153(4) of the County Law and the entire Charter, and particularly Sections 201 and 203, and 1206, 1207 and 1210(a) thereof are void, invalid and unconstitutional in that they deny plaintiffs, and all others

similarly situated, equal protection of the laws in violation of Article 1, Section 11, of the New York State Constitution and the Fourteenth Amendment to the Constitution of the United States, and in that they deprive plaintiffs and all others similarly situated of liberty and property without due process of law in violation of the due process clause of the New York State Constitution and the Fourteenth Amendment to the United States Constitution; and

9. That this Court restrain and enjoin defendant Board of Supervisors from continuing to exercise their power and perform their duties under the unconstitutional Charter and Sections 150 and 153(4) of the County Law and from continuing to abuse and dilute the voting rights of plaintiffs and all others similarly situated until valid statutes within constitutional limitations are enacted by the legislature; and that this Court retain jurisdiction of this clause until such time; and

10. That the plaintiffs have such other, different and further relief, decree or judgment in the premises as may be necessary to make effective the rights and relations declared herein, together with the costs and disbursements of this action; and

11. That no further or consequential relief other than as requested herein is or could be claimed.

ARTHUR S. BERGER
Attorney for Plaintiffs
Office & P. O. Address
405 East Main Street
Port Jefferson, N. Y.

(Unverified.)

EXHIBIT "A", ANNEXED TO COMPLAINT

At a Special Meeting of the Board of Trustees of the Incorporated Village of Port Jefferson held the 24th day of October, 1963, at the Village Hall in said Village,

WHEREAS, prior to the incorporation of the Village of Port Jefferson the Suffolk County police district was created consisting in part of the unincorporated territory of the Town of Brookhaven including the territory that became part of the Incorporated Village of Port Jefferson; and

WHEREAS, on or about April 10, 1963, said territory ceased to be part of the Suffolk County police district upon the incorporation of the Village of Port Jefferson by reason of the fact that, upon incorporation, the Village of Port Jefferson became possessed of the same status, powers and privileges granted to all villages, including the power to establish its own police department and to exercise police powers and functions; and to elect whether to become part of or remain separate from the Suffolk County police district; and

WHEREAS, on the 18th day of September, 1963, the Board of Trustees adopted a resolution to afford the electors of the Incorporated Village of Port Jefferson the right to determine and elect whether the Village of Port Jefferson should retain and exercise its police functions and remain separate from the Suffolk County police district; and

WHEREAS, a Special Election was held on the 17th day of October, 1963, at which a proposition to that effect was submitted to the qualified voters and at which a majority of the votes cast were in favor of the proposition and voted that the Village of Port Jefferson shall remain separate from the Suffolk County police district and shall retain and exercise its own police functions; and

WHEREAS, the Board of Trustees desires to affirm and carry out the expressed desire of the voters to retain and exercise the police functions of the Village of Port Jefferson and to remain separate from the Suffolk County police district and further desires to provide for the protection of the property and safety of its inhabitants and their property, and for the preservation of peace and good order and the general welfare by establishing a police department;

NOW, THEREFORE BE IT RESOLVED:

1. That the Incorporated Village of Port Jefferson is not now, and never has been, part of the Suffolk County police district, and is independent and separate therefrom.

2. That, pursuant to Section 188a of the Village Law of the State of New York, a Police Department in and for the Incorporated Village of Port Jefferson be, and the same hereby is, established.

3. That such personnel as may be necessary be employed for and on such terms and compensation as may be fixed by separate resolution. Within the Village the Village Police Department and the members thereof shall exercise all rights, privileges, duties and responsibilities of peace officers and law enforcement officers as provided by law.

4. That such building, land, motor vehicles, uniforms, communications systems, equipment and other matters and things, as may be necessary for said Police Department be purchased and the moneys therefor be appropriated by separate resolution.

5. That, pending the proper organization and functioning of said Police Department, the Mayor of the Village of Port Jefferson is authorized to enter into negotiations for a contract with the Suffolk County Police Department

for the provision of police protection at a price and upon terms to be set forth in said contract, and to submit any proposed contract to the Board of Trustees for review and final action.

6. That the Village Treasurer be, and he hereby is, directed to demand payment from Chester F. Jacobs, as Treasurer of the County of Suffolk, of such sum of money as represents the proportionate share of taxes levied and collected during the year of incorporation from territory within the Village of Port Jefferson to pay annual expenses of the Suffolk County Police Department for the period from April 10, 1963, to November 30, 1963, when the Village of Port Jefferson was not a part of the Suffolk County police district; and said demand shall contain an offer to cooperate to ascertain reasonably the amounts and proportion of taxes to which the Village of Port Jefferson is entitled.

7. That the real property situated within the Incorporated Village of Port Jefferson is not within, but is and has been separate from, the Suffolk County Police District and is not subject to future taxation by the Board of Supervisors pursuant to Section 1210 of the Suffolk County Charter or by the Suffolk County Treasurer or by the Town of Brookhaven to pay the annual expenses of the Suffolk County Police Department.

8. That a certified copy of this Resolution shall be served upon the County Executive, the Board of Supervisors of the County of Suffolk, on the Suffolk County Treasurer, and on the Town of Brookhaven and the Brookhaven Town Tax Receiver to apprise them of the intentions and actions of the Board of Trustees and inhabitants of the Incorporated Village of Port Jefferson, and to allow them to take action in relation to taxation and police matters in keeping with the tenor and intention of this resolution.

APPENDIX C

Judgment of the Court of Appeals Dated December 28, 1967

COURT OF APPEALS

STATE OF NEW YORK, ss:

PLEAS in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 28th day of December in the year of our Lord one thousand nine hundred and sixty-seven, before the Judges of said Court.

Witness,

The HON. STANLEY H. FULD,
Chief Judge, Presiding.

RAYMOND J. CANNON,
Clerk.

REMITTITUR December 28, 1967.

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2. No. 201. 67

Incorporated Village of Port Jefferson, & ors., &c.,
Plaintiffs-Appellants,

vs.

The Board of Supervisors of the County of Suffolk, & ors.,
Respondents.

(and a proceeding).

BE IT REMEMBERED, That on the 21st day of April in the year of our Lord one thousand nine hundred and sixty-

seven, Incorporated Village of Port Jefferson, & ors., &c., the plaintiffs-appellants, and Paul D. Willcox, as Village Treasurer &c., the petitioner-appellant in this cause, came here unto the Court of Appeals, by Arthur S. Berger, their attorney—, and filed in the said Court a Notice of Appeal and return thereto from the order of the Appellate Division of the Supreme Court in and for the Second Judicial Department. And The Board of Supervisors of the County of Suffolk, & ors., the defendants-respondents, and the County Treasurer &c., the respondent—in said cause, afterwards appeared in said Court of Appeals by George W. Percy, Jr., & ano., their attorneys.

Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

WHEREUPON, The said Court of Appeals, this cause having been submitted, after due deliberation had thereon, did order and adjudge that the order of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is affirmed, with costs to the respondents Board and County Treasurer.

And it was also further ordered that the records aforesaid, and the proceedings in this Court, be remitted to the Supreme Court of the State of New York, there to be proceeded upon according to law.

THEREFORE, it is considered that the said order be affirmed, with costs &c., as aforesaid.

And thereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York before the Justices thereof, according to the form of the statute in such case made and provided,

to be enforced according to law, and which record now remains in the said Supreme Court, before the Justices thereof, &c.

RAYMOND J. CANNON,
Clerk of the Court of Appeals
of the State of New York.

COURT OF APPEALS, CLERK'S OFFICE,
Albany, December 28, 1967.

[SEAL]

I HEREBY CERTIFY, that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

RAYMOND J. CANNON,
Clerk.

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Constitutional and Statutory Provisions

Federal Constitution:

Constitution of the United States, Equal Protection and Due Process Clauses, Fourteenth Amendment, Section 1 .... See references and Appendix A in preceding Jurisdictional Statement; see also here 2, 6

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* See text under respective headings in preceding Jurisdictional Statement.

New York Statutes:

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The Suffolk County Charter (Chapter 278 of Laws of 1958), including Article XII thereof, Sections 1206, 1207 and 1210(a)	See references and Appendix A in preceding Jurisdictional Statement; see also here 2, 3, 5, 6
The Village Law of the State of New York, Section 34	See references and Appendix A in preceding Jurisdictional Statement; see also here 2, 3, 5
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Federal Statute:

28 U. S. Code § 1257(2)	See references in preceding Jurisdictional Statement; see also here 3

IN THE

Supreme Court of the United States

October Term, 1967

No.

In the Matter of the Application of

PAUL D. WILLCOX, as Village Treasurer of the Incorporated Village of Port Jefferson,

Appellant,

against

THE COUNTY TREASURER OF THE COUNTY OF SUFFOLK,

Appellee.

ON APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

JURISDICTIONAL STATEMENT

As already indicated in the footnote at page 10 of the annexed Jurisdictional Statement in the case entitled "Incorporated Village of Port Jefferson, Robert L. Robertson and Robert E. Link, on behalf of themselves and all others similarly situated owners, taxpayers, voters, residents, electors and citizens, in the Incorporated Village of Port Jefferson, in the Towns of Brookhaven, Smithtown, Huntington, Islip and Babylon, and in every Village to be incorporated in said Towns hereafter, Appellants, against, The Board of Supervisors of the County of Suffolk, the County Treasurer of the County of Suffolk, and the Receiver of Taxes of the Town of Brookhaven, Appellees",

this proceeding, started December 13, 1963 (R. 259)* was instituted under Article 78 of the New York Civil Practice Law and Rules for judgment directing appellee to perform a duty enjoined upon him by Section 34 of the Village Law of the State of New York and to pay to the appellant Treasurer of the Incorporated Village of Port Jefferson proportional taxes collected by appellee for County Police District purposes against real property in the Incorporated Village of Port Jefferson. The appellant in this proceeding is the Village Treasurer of the appellant Incorporated Village of Port Jefferson in the case and the appellee County Treasurer of the County of Suffolk in this proceeding is the same appellee of that title in the case. Both the appellant and this appellee are jointly interested in and directly affected by the judgment of the Court of Appeals being appealed to this Court which relates to the superseding of Section 34 of the Village Law by Article XII of the Charter and sustains the constitutionality of Article XII of the Charter under the Fourteenth Amendment to the Federal Constitution. Both proceeding and case present on their respective appeals the same basic question described as Question 4 in the foregoing Jurisdictional Statement under "Questions Presented". In the courts below, this proceeding was tried and heard jointly with the case. In the Supreme Court, Suffolk County, the case and proceeding were tried jointly in the trial court (R. 67, 105) and the petition in the proceeding (R. 45-58) was dismissed "for the same reasons" (R. 250) that the complaint was dismissed. Thereafter, this proceeding, jointly with the case, was appealed to and determined by the Appellate Division, Second Judicial Department, and subsequently this proceeding was appealed, again together with the case, to the Court of Appeals in which, without opinion, there was an affirmance of the Appellate Division

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* Numbers in parentheses refer to pages in the record to be filed in this Court.

order affirming the judgments of the lower court and dismissing both the proceeding and the case (R. 271). Both this proceeding and the case share common questions of law and fact (R. 55, 67), are included in the same record to be certified and transmitted to this Court, and, as the petition in this proceeding alleged both Section 34 of the Village Law (R. 52-53) and Article XII of the Charter, Sections 1206, 1207 and 1210(a) (R. 46-48), both this proceeding and the case involve the same state statutes and draw into question the validity of Article XII of the Charter. This Court, under 28 U. S. Code Section 1257(2) and the reasons and authorities set forth in the foregoing Jurisdictional Statement filed in the companion case, has jurisdiction of this proceeding. Appellant, in this proceeding, also appealing to this Court from the judgment of affirmance of the Court of Appeals, joins in the appeal to this Court by the appellants in the case.

Appellant, joining in the appeal, appeals from the same final judgment as the appellants in the companion case and as described in the foregoing Jurisdictional Statement for that case. A separate Notice of Appeal was filed by appellant with the clerk of Suffolk County, in the Court of Appeals, in the Appellate Division, Second Judicial Department, and in the Supreme Court, Suffolk County, on the 31st day of January, 1968, the same day as appellants in the case filed their Notice of Appeal.

Citations to Opinions Below

Jurisdiction

Constitutional and Statutory Provisions

Question Presented

Statement

The Questions Are Substantial

Conclusion

It would be repetitious to restate under the foregoing headings all that was stated in the Jurisdictional Statement which precedes this one and which is being filed in the companion, jointly heard and determined case. All that was stated there under Citations to Opinions Below, Jurisdiction, Constitutional and Statutory Provisions, Question Presented, The Questions Are Substantial and Conclusion, and all that was recited under "Statement" for that case, with particular reference to Question 4, is pertinent here and was similarly admitted or established at the trial. Appellant asks that the statements made in the foregoing Jurisdictional Statement, as they extend to Question 4 on this appeal, be deemed incorporated here. Appellant will limit himself to highlighting in the following summary form only some other aspects that relate more appropriately and directly to this proceeding:

1. That on and after the date of its incorporation, on April 10, 1963, the Incorporated Village of Port Jefferson was not included in the County Police District (R. 53-54).

2. That appellee has received and collected as part of his duties $237,002.90 in taxes levied and collected for the

year of incorporation (1963) against real property in the Village to pay annual expenses of the Suffolk County Police Department and will collect and receive more of such taxes in the following year (R. 55).

3. That the territory in the limits of the Incorporated Village of Port Jefferson was part of the County Police District only until it became incorporated as a Village on April 10, 1963, and was not included thereafter and was not included in the County Police District for a period of 235 days of the year beginning December 1, 1962, and ending November 30, 1963, that 253/365 of the sum of $237,002.90 for 1962/1963 and for all taxes for 1963/1964 should be paid to appellant pursuant to Section 34 of the Village Law which statute imposed a duty on appellee to make such proportionate payment of taxes to appellant (R. 56-57).

4. That before institution of this Article 78 proceeding written demand pursuant to Section 34 of the Village Law was made upon appellee by appellant for proportionate repayment of taxes, which demand and payment were refused by appellee who fails to perform the duty enjoined on him by statute to make payment (R. 57). No part of the taxes claimed as owing to the Village have been paid (R. 58).

The answer of the appellee (R. 59-61) contains general denials and no affirmative defense, admitting, among other things, demand for payment and refusal (R. 61).

5. That the opinions below of the trial court and Appellate Division in dismissing appellant's petition as well as the complaint in the companion case held that Article XII of the Charter modified and superseded Section 34 of the Village Law, modified various rights of the Incorporated Village of Port Jefferson so that, insofar as Section 34 directed the treasurer of a county to pay to the treasurer of a newly incorporated village taxes collected for municipal

district purposes, appellant was not entitled to a proportionate repayment of taxes collected for County Police District purposes, and said opinions further held that Article XII, in denying these rights, was not violative of the Fourteenth Amendment to the Constitution of the United States. These opinions and judgments, as in the companion case, were affirmed by the Court of Appeals without opinion. The judgment of the Court of Appeals is in direct conflict with the Fourteenth Amendment to the Constitution of the United States and would discriminate against local governments, villages in particular, and impair their rights and charters, solely on the ground of their date of incorporation. The judgment should be reviewed and, if reversed in the companion case, should be reversed with respect to this proceeding.

Respectfully submitted,

WILLIAM M. JOHNSON,
Attorney for Appellant,
Pen and Pencil Building,
Main Street,
Port Jefferson, New York, 11777,
516-HR-3-2200.

ARTHUR S. BERGER,
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Pen and Pencil Building,
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Port Jefferson, New York, 11777,
516-HR-3-2200.